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Justin C. Smith, *Unfair Labor Practices in Wisconsin*, 45 Marq. L. Rev. 223 (1961).
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UNFAIR LABOR PRACTICES IN WISCONSIN

JUSTIN C. SMITH*

INTRODUCTION**

The unfair labor practice provisions of the Wisconsin Employment Peace Act¹ have been in operation since May, 1939, with the result that it would seem appropriate at this time to inquire into their effect on labor management relations in Wisconsin. Although extremely controversial in nature, the unfair labor practice sections of the Act² have, in the past, received relatively little attention from writers.³ To a certain extent this oversight may be explained by the fact that heretofore little or nothing has been collected in the way of primary materials. Also, in view of the fact that the legislation was drafted by a private attorney and that no record was kept of the debate on the measure in either the Assembly or Senate, no formal legislative history is available for critical study.⁴ However, an earlier article sought to identify the forces responsible for drafting Bill 54,A⁵ as well as reconstruct the circumstances surrounding the passage of the legislation.⁶

The writing of this article was preceded by a two-year field study of the Peace Act, estimating how the legislation has functioned in practice as compared with the pronounced anticipations of the Act's sponsors. Where practicable, individual and group opinions gained through confrontations have been preserved in the text in the hope that these expressions may be of interest to those seeking to evaluate the Act's impact on labor-management relations.

Although no definite cut off date has been adhered to, by and large this discussion has been limited to decisions and events arising during

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**Ed. Note. This article is part one of a two part series. Part two will appear in the next issue of the Marquette Law Review.

¹ Wis. STAT. ch. 111 (1959).

² Wis. STAT. §111.06 (1959).

³ The exception being *A Study of the Wisconsin Employment Peace Act—The Selection of Collective Bargaining Representatives*, 1956 Wis. L. REV. 283; *Part II—Union Security*, 1956 Wis. L. REV. 481; *Part III—Unfair Labor Practices* 1957 Wis. L. REV. 136.

⁴ For a detailed description of the role of the Wisconsin Council on Agriculture Co-operatives in drafting the "Peace Act" see: Smith, *The Background and Events Leading Up to the Passage of the Wisconsin Employment Peace Act*, 12 LAB. L. J. 23 (1961).

⁵ *Ibid.* See also: Swanton, *Review of the Role of the Wisconsin Council on Agriculture Concern About Labor Relations in Wisconsin*, (a statement prepared by the Council's executive secretary on file in the council's office in Madison, Wisconsin).

⁶ *Supra* note 4. See also: Memorandum by Walter Bender, *Answers to Specific Objections to Bill No. 154A*, presented at a hearing before Joint Finance Committee on April 12, 1939, on file with the Wisconsin Council of Agriculture Co-operative, Madison, Wisconsin.

the first twenty years of the existence of section 111.06. It is hoped that periodically, perhaps, at ten-year intervals, others will extend this study.

Because the legislature in passing this act in 1939 anticipated broad changes in our national labor policy (which were to await the 1947⁷ and 1959⁸ amendments to the National Labor Relations Act), the whole scheme of the W.E.P.A. seemed at odds with both labor's announced goals and the Wagner Act. Thus the "Peace Act," unlike its predecessor, the Wisconsin Labor Relations Act,⁹ provides certain sanctions against labor as well as against management for violation of the statutorily established code.

The W.E.P.A.'s legislative sponsors, speaking through the Act's draftsman, stated the rationale behind these provisions thusly:

The present law describes unfair labor practices on the part of the employer but says nothing in reference to unfair labor practices on the part of employees. Without in any way accusing the great mass of employees in this state of doing acts which are unfair in labor disputes, it must be admitted by all that there have been many instances in recent years of acts of this character. As stated at the outset, this bill aims to protect as fully as may be expected the rights of the public. This being true, it follows that the bill must define and forbid acts which constitute unfair practices on the part of employees just as it defines and forbids acts of this character on the part of employers. Furthermore, it should forbid any such acts when done by third parties on behalf of either the employer or the employee. This section is designed to meet these requirements and defines unfair labor practices by anyone of these groups.¹⁰

Thus, it appears from the outset that those responsible for the Act were concerned with the interest of three often irreconcilable interests: those of the public, labor and management.

Some insight as to how the Act sought to recognize these interests and treat them may now be had by looking to the provision of the Act and their application in practice.

1. EMPLOYER UNFAIR LABOR PRACTICES

a. *Restrain or Coercion of Employees.* Section 111.06(1)(a) provides that it shall be an unfair labor practice for an employer "to interfere with, restrain or coerce his employees in the exercise of the rights guaranteed in section 111.04." This subsection is substantially identical with a similar provision in the WLRA, and it needs no comment here.

⁷ Labor Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. §§151-166 (1958).

⁸ Labor-Management Reporting and Disclosure Act, 73 Stat. 519 (1959), 29 U.S.C.A. §§401-531 (1960 Supp.).

⁹ Wis. LAWS 1937, ch. 51; Wis. STAT. ch. 111 (1937), repeated by Wis. LAWS 1939, ch. 57.

¹⁰ Walter Bender, *Commentary on Wisconsin Employment Peace Act*, on file with the Wisconsin Employment Relations Board (hereinafter cited as *Commentary*).

b. *Domination and Support of Labor Organizations.* In restricting employer activities, the act states that employers shall not "initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it." However, it also provides that employers shall not be prohibited from paying employees at the prevailing rate of pay, from conferring with their employees, nor from cooperating with representatives of at least a majority of the employer's employees. Thus, by statute the employer is free to open his plant to a majority union, at their request, for organizational and other activities, provided that in so doing the company does not incur any additional expense.

Field interviews indicated that this particular provision of the act, although generally favored by labor, is seldom invoked.

By allowing an employer to open his plant to the majority union for meetings, the act sought to lessen the economic burden facing employee organizations and to insure the best possible attendance at union meetings.

Very few decisions have arisen out of sections 111.06(1)(a) and (b)—which should be read together. While the boundaries of permissible employer conduct must be defined by the facts in each case, the Board has held that the organization by the employer of a shop council for the purpose of meeting from time to time on the employer's premises to discuss working conditions does not constitute an unfair labor practice.¹¹ However, in a matter decided some two and one-half years later the Board concluded that the act does preclude an employer from negotiating individual contracts containing a provision that the employees should form their own union, when the employer had knowledge of an existing majority union.¹²

A more difficult problem is presented by the prohibition against employer interference with the administration of a union of the employees' own choosing. This point was raised in the *A. L. Shafston Co.* case¹³ wherein the Board held that it was an unfair labor practice for an employer to refuse to negotiate with a union until the membership had selected another representative as its bargaining agent. During the same period the Board further indicated that it may be an unfair labor practice for an employer to threaten to close his plant if a union won a forthcoming election,¹⁴ reasoning that such a threat constituted an interference with the formation and administration of a labor organization.

¹¹ Northwestern Engraving Co., WERB Dec. No. 50, (1940).

¹² John Kadow, Inc., WERB Dec. No. 440 (1942), *aff'd*, Manitowoc Cty. Cir. Ct. (Sept. 1942).

¹³ A. L. Shafston Co., WERB Dec. No. 2041 (1949).

¹⁴ Winneconne Stamping Co., WERB, Dec. No. 2044 (1949).

Although originally considered a potential trouble spot, in practice sections 111.06(1)(a) and (b) have proven neither troublesome nor the basis for conduct at variance with the purpose of the statute.

c. *Encouragement or Discouragement of Membership in a Labor Organization.* The act makes it an unfair labor practice for an employer to encourage or discourage membership in a labor organization. In certain cases the act spells out an exception and permits execution of an "all-union" agreement where (1) two-thirds of the voting employees of an appropriate bargaining unit have voted affirmatively by secret ballot in favor of executing such agreement, and (2) those voting for the agreement constitute at least a majority of such unit.¹⁵ The validity of the executed "all-union" agreement is made conditional on the union's receiving as a member any employee of the employer.

Additional provisions are incorporated into this subsection to handle the situation where, subsequently, "there is reasonable ground to believe that there exists a change in the attitude of the employees concerned toward the 'all-union' agreement."

An early judicial construction¹⁶ of section 111.06(1)(c) summarizes the Board's interpretation with respect to encouragement or discouragement of union membership. Here the court held that the discharge of an employee under the supposition, either rightfully or wrongfully, that such employee was engaging in union activities in a discriminatory discharge under the act.

Numerous Board decisions have followed this decision, and all have supported the basic proposition that discharge for alleged union activities is an unfair labor practice. In discussions of discriminatory discharge matters with representatives of the Board, it has been noted that the policy of the Board is to act as rapidly as possible in these cases in order that (a) "the employee be restored to gainful employment and a pay check as soon as possible," and (b) the assessment of damages against the employer, i.e., back pay awardable to the discriminatorily discharged employee, be kept to a minimum. Unfortunately, in the majority of instances in which an employee has been reinstated, the employee, realizing that his employment relation will henceforth be strained, does not choose to continue working for the employer against whom the charges were brought.

The mechanics and decisions of the Board relating to the referendum aspect of section 111.06(1)(c) have received ample treatment from Hugh G. Hafer, writing in the *Wisconsin Law Review*.¹⁷ No attempt is made to duplicate this work. Needless to say, the referendum provisions of the act are extremely important.

¹⁵ WIS. STAT. §111.06(1)(a) (1957).

¹⁶ *Century Building Co. v. WERB*, 235 Wis. 376, 291 N.W. 305 (1940).

¹⁷ Comment, 1956 WIS. L. REV. 481.

A recent decision of the Board interpreting the voidability of an "all-union" agreement by virtue of the union's failure to receive as a member an employee of the employer does, however, merit close scrutiny. The case, *Appleton Photo Engravers Union #77*,¹⁸ involved a complaint brought by an employee of an employer operating under an "all-union" agreement with a local of the International Photo Engravers Union of North America. The facts are that the employee was in every way qualified for admittance to the union and that his employer regarded his work as superior. However, the union twice declined the complainant's application for membership, giving several reasons for its refusals, some pertaining to the man's personal life.

The Board in its conclusions of law found that (a) the respondent had unreasonably denied the complainant membership in the union within the meaning of section 111.06(1)(c)(1) of the Wisconsin statutes and ordered that the "all-union" agreement to which the union was a party be set aside in 20 days unless in the interim it accepted the complainant as a "regular and bona fide journeyman member." In its accompanying memorandum the Board noted:

We cannot make the Complainant whole for the wages he lost as the result of the discrimination he has suffered at the hands of Local 77 and with the consent, no matter how reluctant, of the Marathon Corporation, since our statutes afford no such relief when labor organizations have wrongfully caused loss of employment under union security agreements where there has been no complaint filed against the employer.

Thus the Board has clearly announced that section 111.06(1)(c)(1) requires that a union operating under an "all-union" agreement accept for membership all qualified employees of the employer. Similarly it would appear that an action may be brought under this subsection even if the employee's real purpose in seeking admittance is to utilize his "card" in obtaining employment in another community in the state.

Section 111.06(1)(c)(2) states that no petition by an employer for a referendum shall be entertained by the Board unless the employer has an agreement with the majority union in the collective bargaining unit that he will enter into an "all-union" agreement upon approval by his employees expressed in said referendum.

The Act's draftsmen, in including this provision, assured organized labor that an employer would not be free to poll the union's strength through a Board-held referendum and then refuse to execute such agreement should the poll show that the overwhelming majority of his employees favor such an agreement.

¹⁸ WERB Dec. No. 4187-A (1956).

The most recent statistics of the Board¹⁹ indicate that during the period from July 1, 1959, through June 30, 1960, organized labor won 135 referenda, representing 75 per cent of all referenda held during that period.

Field interviews have indicated that for the most part both labor and management have found section 111.06(1)(c) workable, although labor has indicated that it feels the two-thirds balloting requirement should be reduced to a simple majority of those voting. When questioned specifically as to whether or not labor would move for such a reduction in the voting requirements, spokesmen for organized labor indicated that they doubted if sufficient strength could be found in the legislature for such a revision.

d. *Refusal to Bargain Collectively.* Section 111.06(1)(d) makes it an unfair labor practice for an employer to refuse to bargain collectively with a majority of his employees in a collective bargaining unit. However, the act further states that an employer shall not be deemed guilty of an unfair labor practice if he files with the Board a petition for a representation election, for the purpose of having the Board certify to him the name of the union, if there be one, representing the majority of his employees in the collective bargaining unit.

In view of Mr. Hafer's coverage of the *Selection of Collective Bargaining Representatives*,²⁰ this discussion is limited to Board decisions, judicial construction of the subsection, and pertinent facts revealed in the interviews. It will be recalled that matters relating to representatives and elections are covered in section 111.05 of the act, while section 111.06(1)(d), which we are now considering, covers unfair labor practice charges against employers refusing to bargain collectively with their employees.

(1) *Conditions precedent to employer's duty to bargain.* The unfair labor practice provisions apply if the employer has either actual or constructive knowledge of the union's majority status; thus in *Appleton Chair Corporation*,²¹ the court held that the corporation by failing to bargain with the union after a Board certification violated the act. The act does not, however, require that the employer receive any written notice of a union's majority. Once an employer has constructive knowledge of a representative's majority status, the employer has a duty to recognize the union as the bargaining agent.²²

It would also appear that once employees have selected a labor organization to represent them through an NLRB-conducted election, that

¹⁹ Wisconsin Employment Relations Board, Twenty-Second Annual Report (1961).

²⁰ Comment, 1956 WIS. L. REV. 283.

²¹ *Appleton Chair Corp. v. United Brotherhood*, 239 Wis. 337, 1 N.W. 2d 188 (1941).

²² *Stowe Plastic Products Co., Milwaukee Co. Cir. Ct.*, (1951).

organization will continue to represent the majority of the employees until termination by some legally effective manner.²³

(2) *Employer's duty to meet and negotiate.* In general, an employer has a duty to meet with the certified representatives of his employees, to listen to proposals, and to consider any counter offers which they may make;²⁴ the employer is under no obligation to grant requests made by union representatives in a bargaining conference.²⁵

In practice this subsection has caused little concern on the part of either labor or management. Because the parties' rights and obligations are easily ascertainable, this section seldom comes up for Board interpretation. In only one known instance, during the course of a bargaining session in an up-state woodworking plant, has a labor organization threatened to file charges for refusal to bargain under this section.

e. *Bargaining Collectively With Less Than a Majority.* Having affirmatively stated an employer's duty to bargain collectively with the majority representatives of his employees, section 111.06(1)(d), the act further provides in section 111.06(1)(e) that it is an unfair labor practice for an employer "to bargain collectively with the representatives of less than a majority of his employees in a collective bargaining unit." By way of clarification the Board has held that an employer is not guilty of an unfair labor practice where the employer has not yet executed a collective bargaining agreement, and has broken off negotiations with the minority group prior to Board certification of the majority group.²⁶

The fact that this particular subsection has literally no effect on labor-management relations in the state can be seen from the fact that there is but one Board decision squarely in point.

Section 111.06(1)(e) further states that it is an unfair labor practice for an employer "to enter into an all-union agreement except in the manner provided in section (1)(c) of this section."

A number of labor attorneys were questioned relative to the absence of Board decisions on this section. The general explanation was that employers are conversant with the representation provisions of the act so seldom violate this subsection either unintentionally or by design.

f. *Violation of the Terms of a Collective Bargaining Agreement.* No one subsection of the unfair labor practice provisions of the act evoked as many comments during the course of the field interviews as did section 111.06(1)(f) of the act which makes it an unfair labor practice for an employer "to violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award)." Actions which may constitute such a violation include failure to pay

²³ *WERB v. International Ass'n.*, 241 Wis. 286, 6 N.W. 2d 339 (1942).

²⁴ *Appleton Chair Corp. v. United Brotherhood*, 239 Wis. 337, 1 N.W. 2d 188 (1941).

²⁵ *Triangle Mfg. Co.*, WERB Dec. No. 1861 (1948).

²⁶ *Pepsi-Cola Bottling Co.*, WERB Dec. No. 342 (1941).

wages according to the scale set out in the agreement and failure to recognize seniority rights.

In setting the framework for an appraisal of this limitation on employer conduct, it should be kept in mind that, unlike many other provisions of the act, this particular provision has affected employers throughout the state. It is not just the marginal up-state employer, but also the large urban employer who may be called upon to explain his conduct. Management has been universally outspoken against this provision, referring to it as "the compulsory arbitration provision of the act."

In commenting on this particular provision, the act's draftsman said: This subsection requires every employer to respect his contracts. It would seem to be a subject on which there should be no difference of opinion.²⁷

Before discussing the decisions of the Board and judicial determinations, attention should be called to the varying circumstances which give rise to contests under this provision. Two distinctions may be drawn in this respect; first, matters arising in smaller communities are generally of the nature of willful contract violations on the part of small, marginal employers. Second, matters coming to the Board's attention from the larger urban areas generally are of the nature of construction of ambiguous contract provisions. It would appear axiomatic, therefore, that many of the disputes arising in the former category are "cut and dried" while a rather sophisticated review of the facts by the Board is necessary in matters arising out of disputes in the latter category.

In view of the large number of cases involved in this area, an attempt is made here merely to pinpoint the troublesome areas.

(1) *Form of the contract.* The Board has held in two cases²⁸ that a collective bargaining agreement does not have to be in writing and that an oral agreement may be enforceable under the statute. However, the Board clearly held in a subsequent case, *Hotpoint, Inc.*,²⁹ that a violation by an employer of an agreement, oral or otherwise, between the employer and an individual worker concerning working conditions, is not a collectively bargained agreement within the meaning of the act.

(2) *Wages, hours, and working conditions.* In a number of rather routine cases the Board has found employers guilty of failure to pay wages agreed upon. A list of interesting facts are disclosed in those instances where the Board has found an employer guilty of failing to pay employees on dates designated as pay days and of issuing checks on insufficient funds,³⁰ of failing to discuss rates paid to an employee in

²⁷ *Commentary, supra* note 10.

²⁸ *Kaufman Lunch Co.*, WERB Dec. No. 1632 (1948), *aff'd* Milwaukee Co. Cir. Ct. (1948); *Giant Grip Mfg. Co.*, WERB Dec. No. 2318 (1950).

²⁹ *Hotpoint, Inc.*, WERB Dec. No. 2122 (1949).

³⁰ *C. B. Rich Co.*, WERB Dec. 3121 (1952).

violation of an agreement to do so,³¹ of instituting a wage incentive plan without the agreement of the union shop committee and contrary to the terms of the agreement,³² of failing to give the union copies of a rate schedule,³³ and of failing to pay an employee overtime pursuant to the contract provisions.³⁴

In another series of cases the Board held an employer guilty of an unfair practice in refusing to make payments of retroactive pay due employees under the terms of an agreement,³⁵ in refusing to grant severance pay to an employee on discharge contrary to the provisions of an agreement,³⁶ in failing to pay employees holiday pay in accordance with an agreement,³⁷ and in failing to make whole an employee wrongfully laid off.³⁸

(3) *Refusal to arbitrate and refusal to accept an arbitration award.* During the course of the past 22 years the Board has heard a variety of cases arising out of the parties' refusal to accept the arbitration award. In the *Madison Bus Company* case,³⁹ the Board held that a provision in an agreement for arbitration of all future disputes is valid and if a signatory party refuses to submit such dispute to arbitration, it may be ordered to do so by the Board under section 111.06(1)(f) and (2)(c).

Subsequently the Wisconsin Supreme Court held in *Dunphy Boat Corporation v. WERB*⁴⁰ that the provisions of the WEPA should be liberally construed in order to effect the policy of the statute set forth in section 111.01 of the act, and that the refusal by Dunphy to arbitrate the dispute under consideration constituted a violation of section 111.06 (1)(f). In passing on an alleged conflict between chapters 111 (WEPA) and 298 (Arbitration) the court noted:

Sec. 110.10 provides that parties to a labor dispute may agree in writing to have the WERB name arbitrators to arbitrate the same, and that the procedure to be followed in such an arbitration shall be that prescribed in Ch. 298 Stats. We are constrained to conclude that sec. 111.10 was intended to add to the powers of the WERB and not to limit and circumscribe the same.

³¹ Bunde-Upmeyer Dental Lab., WERB Dec. No. 3162 (1952).

³² Morgan Co., WERB Dec. No. 69 (1940).

³³ C. M. Tool & Die Co., WERB Dec. No. 1849 (1948).

³⁴ Badger Nu-Way Cleaners, WERB Dec. No. 19 (1939), *aff'd*, Dane Co. Cir. Ct. (1939).

³⁵ Sterling, Inc., WERB Dec. No. 1100 (1946); Wausau Motor Parts Co., WERB Dec. No. 1369 (1947); Woodland Foundry, Inc., WERB Dec. No. 3252 (1952).

³⁶ Clark's Super Gas Co., WERB Dec. No. 914 (1946).

³⁷ Stone Motors Co., WERB Dec. No. 3331 (1950); C. B. Rich Co., WERB Dec. No. 3442 (1953); Wisconsin Grey Iron Foundry Co., WERB Dec. No. 3565 (1953).

³⁸ Appleton Machine Co., WERB Dec. No. 2598 (1950).

³⁹ Madison Bus Co., WERB Dec. No. 2083-A (1949).

⁴⁰ Dunphy Boat Corp. v. WERB, 267 Wis. 316, 64 N.W. 2d 866 (1954).

In turning to the question raised by the respondent's motion for review, i.e., "that the dispute . . . relating to the method of computing the incentive bonus is not arbitrable," the court was faced with a most difficult problem. The facts giving rise to the dispute were that the employer, unknown to his employees, changed the method of computing the bonus incentive during the year 1949, and in the following year executed an agreement wherein it was stated that there were to be no changes in the "current practices." Subsequently, an employee caught the discrepancy and an unfair labor practice charge was filed after the employer refused to arbitrate the dispute. In supporting the Board's finding that a reasonable arbitrator might well find the matter arbitrable and ordering the parties to arbitration, the court took note of the fact that all of the defenses raised before the Board might be raised by the respondent before the arbitrator and that it was for the arbitrator to pass on these defenses rather than the court.⁴¹

Before the Board can order the parties to arbitration, it must appear from the face of the agreement that the party bringing the unfair labor practice charge has a right to have his dispute arbitrated under the agreement. Thus the Board found in the *Savidusky* case⁴² that where the agreement provided that only the union and the employer had the right to insist on arbitration, the employer did not violate the terms of the agreement by refusing to arbitrate the demands of an individual member.

A more difficult problem was presented in the *Cutler-Hammer* case.⁴³ Here the Board held that, where a collective bargaining agreement provided that the employer should have the absolute power to determine whether a leave of absence should be granted to employees, the employer did not violate the agreement by refusing to submit to arbitration the question of whether the employee was entitled to a leave. The controversy arose because the agreement also provided for arbitration in matters or controversies "arising out of or having to do with or concerning the application, and/or interpretation of any clause or clausings."

As might well be expected, the Board, under the direction of Section 111.06(1)(f), has had occasion to pass on the arbitrability of a number of disputes. For the most part these decisions might well be described as "common sense" decisions and need no comment here apart from stating that organized labor has expressed considerable respect for the Board decisions in these matters. A union president for a mid-state cartage local stated that, in his opinion, "you pretty much knew where you stood" with respect to the Board's disposition of a

⁴¹ For an excellent discussion on the enforcement aspects of the state act, see: Comment, 1957 WIS. L. REV. 136.

⁴² *Savidusky's, Inc.*, WERB Dec. No. 475 (1943), *aff'd*, Dane Co. Cir. Ct. (1943).

⁴³ *Cutler-Hammer, Inc.*, WERB Dec. No. 1476 (1947).

matter brought under this section, and also that "the Board called its shots as it saw them" in this area.

It is of particular interest to note that with one exception⁴⁴ unions have not resorted to this section to enforce contractual provisions relating to "job ownership" or "job control." This would seem to indicate that organized labor prefers to settle its own jurisdictional problems without resort to the Board's offices.

Two observations should be made before summarizing the effect of this subsection. First, the Board has taken the position that it will not lend its offices to the enforcement of an illegal contractual clause. Hence, in the *Henry* case⁴⁵ it held that the employer had committed no violation of the act in subcontracting work to a contractor not a party to an "illegal industrywide" agreement requiring the use of union labor. Second, the Board has insisted that an employee exhaust his contractual remedies before seeking Board relief under this subsection.⁴⁶

Subsection 111.06(1)(f) has been very popular with union business agents throughout the state, for it affords them an inexpensive forum for disposition of many of the small grievances which comprise a significant portion of their duties. As elective officers, business agents are concerned with obtaining some measure of satisfaction for their constituents; and as one stated, "In a good share of cases getting the thing settled is more important than who wins." Furthermore, business agents are not unmindful of the fact that their ability to appear on behalf of an aggrieved employee without counsel reflects favorably on their ability "to get the job done for the boys." Several indicated during the interview that they prefer to keep control of the "case" rather than relinquish it to either local counsel or counsel for the international "who may see it in a different light."

g. Non-recognition or Non-acceptance of an Award. Subsection 111.06(1)(g) makes it an unfair labor practice for an employer "to refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final determination (after appeal, if any) of any tribunal having competent jurisdiction of the same or whose jurisdiction the employer accepted." This particular subsection should be read with subsection 111.06(1)(f) above, in that they both afford labor administrative relief for contract violations rather than requiring it to seek judicial relief.

Research into the background of the act has brought nothing to light which would indicate why this subsection was included in the Peace Act, in view of its absence from the WLRA. Its inclusion does suggest a tacit awareness on the part of those responsible for the act's passage

⁴⁴ American Electrotyping Co., WERB Dec. No. 63 (1940), *aff'd*, Milwaukee Co. Cir. Ct. (1940).

⁴⁵ Frank J. Henry, Inc., WERB Dec. No. 3849 (1954).

⁴⁶ Wisconsin Motors Corp., WERB Dec. No. 3943 (1955).

that employers are just as susceptible to the temptation to refuse arbitration awards as are unions.

Even the comments of the act's draftsman, usually a source of some illumination, offer little help in this instance:

This subsection requires the employer to abide by the decisions of the Board or the court on appeal. This also is something which should not require any argument in its support. There is no similar provision in the present law.⁴⁷

While there is no legislative history of the act available to consult in connection with the wording "of any tribunal having competent jurisdiction of the same," it would appear that in utilizing this language the draftsman intended to include the decisions of the WLRB. This view is supported by the fact that the orders and determinations of that body were not expressly nullified by the repeal of the WLRA. In addition to the decisions of the Board and judicial review thereof, this section covers decisions of arbitrators and arbitration boards where their jurisdiction has been accepted by the employer.

Precisely what was meant by the language "refuse or fail to recognize or accept" is not clear. It is generally believed by both labor and management that this subsection does not apply to those instances in which an employer in good faith makes a post-election statement regarding the union's strength, which statement is not intended to undermine the union. Thus, should an employer after an election state that he feels that the successful local is inappropriate for the representation of his employees, such a statement would not appear to be a violation of subsection 111.06(1)(g).

Several leading Board decisions are of value in contrasting the Board's function in this area with what the parties believe to be the Board's function. In commenting on the finality of an arbitration award in the *Le Roi* case⁴⁸ the board held that an employer's refusal to accept an arbitration award did not constitute a violation of this subsection in that the award had been appealed to the circuit court and no determination had been made as of that date. In another decision handed down the same year, the Board found that, while it was in disagreement with the award of the arbitrator, the Board was powerless to upset the award since the parties had submitted to the arbitrator's jurisdiction.⁴⁹

Without attempting to touch too closely on the interesting problems posed by wartime regulations, a noteworthy case should be considered. In interpreting subsection 111.06(1)(g), the court held in *Allis-Chalmers Manufacturing Company*⁵⁰ that the employer's refusal to accept

⁴⁷ *Commentary*, *supra* note 10.

⁴⁸ *Le Roi Co.*, WERB Dec. No. 1465 (1947).

⁴⁹ *Wisconsin Axle Division*, WERB Dec. No. 1467 (1947).

⁵⁰ *Allis-Chalmers Mfg. Co. v. WERB*, 254 Wis. 484, 37 N.W. 2d 36 (1949).

an award of the War Labor Board, after having stipulated to its jurisdiction, constituted a violation of this subsection.

In passing on the finality of an award, a state circuit court in a 1951 case⁵¹ held that the board was powerless to hear anew a dispute where the employer, in compliance with the parties' agreement, accepted and fully complied with an award, thereby rendering the matter *res judicata* and precluding a hearing *de novo* by the board.

In passing on the competency of the tribunal, the board in both the *Sterling* case and the *Briggs & Stratton* case⁵² held that an alleged failure by an employer to comply with the directives of the War Labor Board, in instances where the employer had not voluntarily accepted its jurisdiction, was not an unfair labor practice within the meaning of subsection 111.06(1)(g). In asserting its reason for so holding, the board stated that, "The War Labor Board was not deemed to be a tribunal of competent jurisdiction to conclusively determine the issues under any controversy between the parties, since its orders were advisory and did not create any legal rights or impose legally enforceable obligations upon either of the parties."

The over-all impact of subsections 111.06(1)(f) and (g) is not easily stated. Certainly it has had the effect of affording organized labor swift administrative relief in those instances in which employers have either refused to resort to the arbitration of a dispute as agreed upon or failed to abide by the award of a competent tribunal. Initially this protection was of universal importance to labor throughout the state. As particular unions and locals have grown in strength, these provisions have become less important to them. For, they may, in given instances, choose to use their economic strength to afford them that which is secured to them by the act.

Management, on the other hand, reflects its over-all attitude toward the unfair labor practice provisions of the act by its dislike of these particular subsections because they afford labor an opportunity to seek adjudication of disputes without resort to the courts in the first instance.

As opposed to similar charges which they might bring against organized labor, management's desire to have those unfair labor practice charges brought against them tried by a court in the first instance stems from a variety of reasons. First, management realizes that the process of judicial determination is considerably slower than administrative determination so the time element involved may thwart labor's purpose in filing charges. Second, management has had greater occasion in the past to use the services of attorneys and in many instances may have a

⁵¹ Universal Foundry Co., Winnebago Co. Cir. Ct., (1951).

⁵² *Sterling, Inc.*, WERB Dec. No. 889 (1946); *Briggs & Stratton Corp.*, WERB Dec. No. 958 (1946).

legal department within the organization, which reduces the costs involved in litigating a dispute. Third, courts have been traditionally reluctant to find employers guilty of unfair labor practices, particularly when such a finding would necessitate the award of back pay.

In summary, it would appear that these subsections are of great importance to organized labor, particularly in those instances in which a local lacks sufficient strength to enforce its demands for arbitration and acceptance of the resulting award.

h. *Discharge or Discrimination Against an Employee Filing Charges.* Subsection 111.06(1)(h) is designed primarily to protect an employee who has filed an unfair labor practice charge against his employer. It is an unfair practice for an employer to:

discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony in good faith under the provisions of this subchapter.

The provision differs only slightly from section 111.08(4) of the WLRA, which provided that it was an unfair labor practice for an employer to:

discharge or otherwise discriminate against an employee because he has signed or filed any affidavit, petition or complaint or given any information or testimony in support of this chapter.

In commenting on this particular provision of the Peace Act and the comparable provision of the WLRA, the act's draftsman noted the substantial similarity between the two, but observed that:

[The Peace Act] adds the condition that the activities of the employee must have been conducted 'in good faith.' It would seem that there would be no objection to this added condition. Surely an employer should not be required to keep in his service an employee if, for example, the board has held that he was guilty of perjury in making the charges against his employer.⁵³

In practice this particular subsection has not been controversial. The first charge filed upon which the board was officially to act came in 1946 when the board held in *Sheboygan Dairymen's Co-operative*⁵⁴ that the discharge of one employee and the demotion of another, for giving information and testifying in a prior proceeding, constituted a violation of this subsection.

A number of union spokesmen were questioned in an effort to establish why so few charges are brought under this section. The consensus was that ample subtle methods of discrimination are available to an employer, none of which could appropriately serve as a basis for unfair labor practice charges. As a member of the union bargaining

⁵³ *Commentary, supra* note 10.

⁵⁴ *Sheboygan Dairymen's Co-operative ASS'n. WERB Dec. No. 1012 (1946), aff'd, Sheboygan Co. Cir. Ct. (1947).*

committee in an upstate industry indicated, "In the absence of a strong union to back up an employee, the boss may well make employment elsewhere attractive." This opinion reveals the paradox of this section. Where organized labor is strong and has less need for protection, the act provides the greatest protection. Conversely, where a local is just getting established in a plant and needs the maximum protection, its members may not be able to take advantage of that afforded by the act because of their insecure position.

Over-all it would appear that this subsection has had little direct but substantial indirect effect on labor-management relations, according to the information reported above.

i. *Deduction of Dues or Assessments Without Authority.* Section 111.06(1)(i) makes it an unfair practice for an employer to:

deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally, and terminable at the end of any year of its life by the employee giving at least 30 days' written notice of such termination.

It should be stated at the outset that, notwithstanding all that has been written concerning the importance of the check-off system, those representatives of organized labor interviewed had little comment regarding this particular directive of the act. Historically, however, the drafting of this particular subsection was said to be very troublesome. Individuals present during the drafting sessions leading up to the public hearings on the bill indicated that management was especially outspoken in criticism of this provision; many were of the opinion that no check-off system should have been allowed.

Walter Bender said in discussing this provision:

This subsection deals with the much disputed question of the 'check-off.' Here again the council has sought to adopt a fair middle ground between the demands of certain employers that the check-off should be outlawed entirely and the demands of extremists on the side of labor who contend that the check-off should be permitted without any restrictions, whatsoever. The bill endeavors to adopt a position which will again make the real will of the employee the determining factor.⁵⁵

In view of the fact that the sponsors of the act were aware of the composition of the legislature and their own ability to obtain passage of far more stringent legislation, it may seem strange that the act provides for any check-off. The answer revealed through the interviews is that the council was primarily concerned with curbing "abuses" and not in "breaking unionism." Hence it is not strange that the state's farm

⁵⁵ *Commentary, supra* note 10.

interests were not particularly concerned with the check-off system, which finds its greatest application in the large shops of metropolitan communities.

Although unpopular with organized labor, this section appears to be amply clear since there has been no formal board decision interpreting the provisions of subsection 111.06(1)(i).

j. *Employment of Labor Spies*. It is an unfair labor practice for an employer to "employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this subchapter."⁵⁶ In commenting on the brevity of this subsection Mr. Bender noted:

This subsection is very similar to the corresponding subsection of the present law save that there is not included . . . the prohibition forbidding the employer to 'keep under surveillance, whether directly or through agents or any other person' the activities in question. These words have been omitted because of their indefiniteness. A charge might well be made that an employer (under the wording of the WLRA) in merely walking through his plant in a proper endeavor . . . was attempting to exercise some measure of surveillance.⁵⁷

k. *Use of a Blacklist*. Subsection 111.06(1)(k), prohibiting the making or use of blacklists (lists of individuals associated with union activities, circulated among employers for the purpose of denying employment to those listed thereon), similarly has had little impact on labor-management relations in Wisconsin. There are no formal board decisions interpreting this provision. The brevity of this subsection is explained by the fact that Wisconsin has another, more comprehensive statute prohibiting this type of activity.⁵⁸

1. *Commission of Crimes or Misdemeanors in Connection with Disputes Arising Out of the Employment Relationship*. The concluding restriction on employer conduct makes it an unfair practice for an employer to "commit any crime or misdemeanor in connection with any controversy as to employment relations." Although no affirmative statement was uncovered which would cast any light upon the inclusion of this restriction, there is evidence that it was included to "balance out" a similar provision regarding labor's conduct. A question was asked during the course of the interviews designed to elicit information on the effect of this provision and its counterpart, subsection 111.06(2)(j) (covering similar conduct on the part of labor), on violence in labor disputes. The majority of those interviewed chose to answer the question solely with respect to the effect on organized labor. This response is understandable in view of the fact that there is only one board de-

⁵⁶ WIS. STAT. §111.06(1)(j) (1957).

⁵⁷ *Commentary, supra* note 10.

⁵⁸ WIS. STAT. §134.02 (1957).

cision holding an employer guilty under this particular subsection. In this case, *National Pressure Cooker*,⁵⁹ the board found the employer guilty of an unfair labor practice in that he had violated a statute⁶⁰ by advertising for employees without stating the existence of a strike.

Here again it would appear that this subsection has had little impact on labor-management relations. However, it should be noted that whether this provision is utilized depends on inclinations of individual counsel—a number were of the opinion that charges filed under the subsection were “useless in that people just do not regard corporations as guilty of criminal acts.” Others actually were unaware that such a provision even existed.

Summary. By and large labor has expressed only qualified satisfaction with the coverage of subsection 111.06(1). Many labor spokesmen regard it as having secured only limited protection to organized labor. Others have expressed the belief that the provisions of this section should be “brought up to date, realizing that violence and counter-violence are no longer dominant factors in labor-management relations.”

2. *Employee Unfair Labor Practices.* We have already noted that the Peace Act departed from the usual pattern of labor legislation in the “thirties” in that it sets forth a series of unfair labor practices restricting the activities of labor. We shall now turn to an analysis of the specific limitations on employee conduct. These limitations are set forth in section 111.06(2). It should be recalled that similar provisions were not incorporated into federal labor legislation until 1947, although considerable pressure to amend the Wagner Act was exerted on Congress by agricultural interests.⁶¹

The Council supported these limitations on employee conduct by arguing that “they [labor] cannot rightly object to accepting the responsibilities which should rest upon them for refraining from those acts which constitute unfair labor practices and thus do their part to insure the maintenance of industrial peace.”

The draftsman, Walter Bender, described the necessity for the “employee” unfair labor practice provisions thus: “Labor organizations in this country are no longer in their infancy and should not have immunity from a proper share of responsibility. No one has put this more clearly than Mr. Justice Brandeis when he said:

This practical immunity of the unions from legal liability is deemed by many labor leaders a great advantage. To me it appears to be just the reverse. . . . It creates on the part of the employer, also, a bitter antagonism, not so much on account of the lawless acts as from a deep-rooted sense of injustice, arising

⁵⁹ *National Pressure Cooker Co.*, WERB Dec. No. 3686 (1954).

⁶⁰ WIS. STAT. §103.43 (1959).

⁶¹ Labor Management Relations Act, 61 Stat. 136 (1947), 29 U.S.C. §§151-166 (1958).

from the feeling that while the employer is subject to the law, unions are in a position of legal irresponsibility. . . .

"The greatest criticism of our present labor legislation is that it is entirely devoted to providing special privileges, special immunities to labor groups and labor activities and is entirely silent in reference to their responsibilities. . . .

"It has sometimes been suggested that labor unions should be incorporated. The council has not made any such requirement in the present bill because it does not believe that such a requirement would meet the necessities of the situation."⁶²

Mr. Bender continued that in his opinion the problem could only be met by setting up standards of conduct for employees just as there had been standards of conduct for employers under the WLRA. In support of this position, he expressed the view that organized labor should find this approach far more tenable than accepting the obligations which incorporation would place on them.

a. *Coercion or Intimidation of an Employee.* The first employee unfair labor practice enumerated by the act makes it a violation of the statute for any employee individually or in concert with others to "coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in section 111.04, or to intimidate his family, picket his domicile, or injure the person or property of such employee or his family."⁶³

The key words in this section are "coerce or intimidate" and a sizeable body of case law has developed interpreting what constitutes either in a given instance. However, before proceeding to a discussion of these points, we must consider the extent to which one party is made responsible for the act of another. The court held in 1943 in the *Allis-Chalmers case*⁶⁴ that the union was responsible for the acts of its president in demanding under threat of strike that the employer discharge a non-member in violation of the act; similarly the union was responsible for the acts of its members in acts of violence against non-member employees and in the continuous solicitation of employees against their will. Conversely, the board held that a trade council and its business agent were not guilty of an unfair labor practice where they neither directed, ordered, controlled nor ratified picketing by employee member.⁶⁵

In defining coercion and intimidation the court in the *Allis-Chalmers* case found that to constitute an unfair practice within the meaning of the act the conduct need not have accomplished its purpose. In both the

⁶² *Commentary, supra* note 10.

⁶³ WIS. STAT. §111.06(2) (a) (1959).

⁶⁴ *Christoffel v. WERB*, 243 Wis. 332, 10 N.W. 2d 197 (1943).

⁶⁵ *Wausau Building Trades Council, WERB Dec. No. 2193* (1949).

Sears Roebuck case⁶⁶ and the *Philip Parish* case⁶⁷ the court held that coercion or intimidation of an employee need not take the form of violence because a man may be coerced or intimidated through fear or loss of wages as well. It has also been held that false accusing an employee of the commission of a criminal offense,⁶⁸ calling an employee offensive names and epithets,⁶⁹ continuous union solicitation of employees over the objections of said employees,⁷⁰ physical violence and threats thereof,⁷¹ threatening employees with punishment if they failed to engage in unlawful work stoppages,⁷² and following the vehicles of employees and engaging in physical attacks on the occupants⁷³ constitute examples of coercion and intimidation within the meaning of subsection 111.06 (2)(a). Other examples of conduct held to be prohibited are the picketing of homes of employees who have continued their employment during the course of a strike;⁷⁴ picketing and boycotting a retail store, where the employees had declined to join the union, for the purpose of forcing them to join;⁷⁵ threat of loss of unemployment for the purpose of intimidating non-union employees to join the union;⁷⁶ and causing the discharge of an employee because he had been suspended from union membership, in the absence of a valid "all-union" agreement.⁷⁷

It is to be noted from the cases cited that the board does not attempt to differentiate between physical and non-physical coercion or intimidation. The resultant effect of the pressure on the employee or his family and not the manner in which it is utilized is the determining factor. A number of union spokesmen interviewed indicated that this lack of differentiation has handicapped organized labor in its organizational activities.

No one conversant with organizational techniques can deny that a certain amount of "pressure" is always present in any organizational situation. Thus, from a practical standpoint it is difficult to see how the board is in a position to announce a rule of thumb which will clarify the

⁶⁶ *Retail Clerks' Union v. WERB*, 242 Wis. 21, 6 N.W. 2d 698 (1942).

⁶⁷ *Philip Parish*, Rock Co. Cir. Ct., (1951).

⁶⁸ *Wausau Bldg. Trades Council*, WERB Dec. No. 2193 (1949).

⁶⁹ *Western Leather Co.*, WERB Dec. No. 287 (1941).

⁷⁰ *Wausau Bldg. Trades Council*, WERB Dec. No. 2193 (1949).

⁷¹ *Ibid.*

⁷² *International Union v. WERB*, 250 Wis. 550, 27 N.W. 2d 875 (1947), *aff'd*, 336 U.S. 245 (1948).

⁷³ *Marathon Electric Mfg. Corp.*, WERB Dec. No. 3141-A (1952), *aff'd*, *Marathon Co. Cir. Ct.* (1952); *Fred Rueping Leather Co.*, WERB Dec. No. 4049 (1955), *aff'd*, *Fond du Lac Co. Cir. Ct.* (1955).

⁷⁴ *Western Leather Co.*, WERB Dec. No. 287 (1941); *Kohler Co.*, WERB Dec. No. 3740 (1954); *Fred Rueping Leather Co.*, WERB Dec. No. 4049 (1955), *aff'd*, *Fond du Lac Co. Cir. Ct.* (1955).

⁷⁵ *Retail Clerks' Union v. WERB*, 242 Wis. 21, 6 N.W. 2d 698 (1942); *Wisconsin Liquor Co.*, WERB Dec. No. 685 (1944), *aff'd*, *WERB v. Retail Clerks International Union*, 264 Wis. 189, 58 N.W. 2d 655 (1953).

⁷⁶ *Christoffel v. WERB*, 243 Wis. 332, 10 N.W. 2d 197 (1943); *St. Joseph's Hospital*, WERB Dec. No. 3142 (1952), *aff'd*, *Ashland Co. Cir. Ct.* (1952).

⁷⁷ *Milwaukee Novelty Dye Works*, WERB Dec. No. 127 (1940).

situation. This problem is enhanced by the fact that the board does not have any practical discretion in accepting or rejecting charges filed under this subsection. It must hear and pass upon all charges which appear from a review of the complaint to have substance.

In an attempt to clarify just what the legislature intended to accomplish in the enactment of subsection 111.06(2)(a), several individuals active in the legislature in 1939 were interviewed. Two of these, who guided the act through the Assembly and Senate respectively, corroborated the view of the Board by indicating that the members of the legislature intended that this subsection cover both physical and nonphysical coercion and intimidation.

A current example of charges filed under this subsection and the board's method for disposing of them is to be found in the nationally famous "Kohler situation" involving a dispute originating in 1954 and continuing up to the present between the United Auto Workers and the Kohler Plumbing Company. This discussion will not attempt to pass on the factual question of whether the acts charged actually occurred. The company filed a complaint; the board scheduled a hearing and took testimony. Less than one week after the hearing date the board issued a formal order⁷⁸ finding that union members had violated section 111.06(2)(a) by picketing the domicile of persons desiring to work at the Kohler Company. The finding was accompanied by a cease and desist order directing the union to refrain from such conduct in the future.

The majority of those interviewed during the course of this study were aware of the board's action in the above matter and voluntarily commented on it. For the most part, they felt that the union had "lost the strike" as a result of losing control over the plant gates, not because of any limitations on its conduct resulting from the board's decision.⁷⁹

b. *Coercion or Intimidation of an Employer.* Section 111.06(2)(b) makes it an unfair labor practice for an employee individually or in concert with others to

coerce, intimidate or induce any employer to interfere with any of his employees in the enjoyment of their legal rights, including those guaranteed in section 111.04, or to engage in any practice with regard to his employees which would constitute an unfair practice if undertaken by him on his own initiative.

Examples of conduct prohibited under this section include the inducement of employers to hire only union members in the absence of a valid "all-union" agreement, and the inducement of employers to coerce employees into joining a given union or to vote a certain way in either an election or referendum proceedings.

⁷⁸ Kohler Co., WERB Dec. No. 3740 (1954).

⁷⁹ That same order, in addition to limiting coercive conduct under §111.06(2)(b), limited the number of pickets at any one gate and the total number of pickets which might be present at the plant at any one time.

According to one individual the degree of compulsion necessary to establish the fact of inducement is particularly troublesome. There is a thin line between inducement and what one employer termed "an awareness as to the facts of life."

While management has expressed general satisfaction with this subsection, organized labor is contemptuous of it.

We turn now to a discussion of specific types of conduct covered by section 111.06(2)(b).

(1) *Inducement to discharge pursuant to illegal agreement.* Perhaps the most interesting of the numerous cases dealing with the problem is *Wisconsin Motors Corporation*.⁸⁰ Here the court held that union involved committed an unfair practice in inducing the employer to enter into an illegal contract which provided for maintenance of membership and the recognition of work permits, and the discharge of employees who were neither members of the union nor holders of work permits.

(2) *Picketing and boycotting.* The decisions of the board with respect to picketing by a union in violation of subsection 111.06(2)(b) of the act fall roughly into three categories. In the first, the union pickets the employer in an attempt to induce him to recognize the union and to enter into a collective bargaining agreement. The decisions of the board and the determinations of the courts are clear in regard to this type of activity; a union, in the absence of a strike vote, violates the act by picketing an employer for recognition. Such a situation arises where either (a) the union approached the employees, or (b) where the union represents a significant portion of the employees of the employer, but as of the date of the prohibited activities has not been certified by the board. In both cases the conduct prohibited does not turn on the coercion of the employees, but rather on "any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him [the employer] on his own initiative."

The second situation arises where the picketing is conducted for the purpose of compelling the employer to coerce his employees, who have previously declined to join the union, into joining the union. The most recent example of this type of union activity is to be found in the *Vogt* case.⁸¹ Here the union had previously approached the employees of the primary employer on several occasions and had been unsuccessful in persuading them to join the union.⁸² Somewhat later the union picketed the employer with the result that truckers refused to deliver supplies to the employer. On rehearing, the Wisconsin Supreme Court found the activities in violation of subsection 111.06(2)(b), in that the picketing

⁸⁰ *International Union v. WERB*, 245 Wis. 417, 14 N.W. 2d 872 (1944).

⁸¹ *International Brotherhood of Teamsters, AFL v. Vogt, Inc.*, 354 U.S. 284 (1957).

⁸² Note, 1958 Wis. L. Rev. 154.

was for an unlawful purpose, and the United States Supreme Court on certiorari upheld the decision of the state supreme court.

This case was discussed with a number of persons conversant with the facts giving rise to this dispute. Many of the facts warrant an opinion that the element of coercion was not present in union's picketing of Vogt.⁸³ Regardless of the facts in the case, it now appears that peaceful organizational picketing may be enjoined when it is in violation of section 111.06(2)(b) of the Wisconsin Statutes.

The third example of union activity which has been held in violation of this subsection is picketing conducted for the purpose of inducing an employer to enter into an "all-union" agreement in the absence of a supporting referendum.⁸⁴

In sum it would appear that this subsection has had a greater effect on labor-management relations than any other provision of section 111.06(2). Each board decision holding labor guilty of an unfair labor practice under this subsection has, in effect, reduced labor's ability to organize and recruit new strength. Labor spokesmen are particularly critical of this provision of the statute. They maintain that, in their opinion, this provision has cost the unions "what we consider to be a normal yearly increase in membership." Both local officers and union counsel maintain that some degree of compulsion is necessary to "meet the pressures which management can bring to bear." The prohibition, under board interpretation of coercion, of the "unfair list"⁸⁵ and "approved list"⁸⁶ are frequently cited examples of the "unfair nature of the act."

Moreover labor is quick to point out that, "We simply cannot afford in terms of either time or money to organize under the restrictions placed on us by the act."

c. *Violation of the Terms of a Collective Bargaining Agreement.* Subsection 111.06(2)(c) makes it an unfair labor practice for an employee individually or in concert with others to "violate the terms of a collective bargaining agreement (including an agreement to accept an arbitration award)." A comparable section, 111.06(1)(f), was discussed *supra*. Unlike its decisions under the latter, the board's decisions under this section are far less numerous and compartmentalized. Unfortunately, the field interviews did not reveal any particular information surrounding the inclusion of this subsection in the act, apart from

⁸³ There was considerable evidence disclosed by the interviews to suggest that the union's immediate purpose in picketing the employer was to answer the demands of the organized employers of the region "that something be done about Vogt" and that the union had little hope of organizing Vogt's employees either by coercion or other means.

⁸⁴ Poole & Poole, WERB Dec. No. 286 (1941); Joseph Landres, WERB Dec. No. 2135 (1949), *aff'd*, Brown Co. Cir. Ct. (1950).

⁸⁵ Sheboygan Sausage Co., WERB Dec. No. 1410 (1947).

⁸⁶ Louise R. Branger, WERB Dec. No. 2339 (1950).

a general observation that "it was felt that there was need for such a provision based on employers' past experience with labor."

Under the board's interpretation, this subsection covers oral agreements just as does subsection 111.06(1)(f).⁸⁷ Similarly, before a union can be found guilty of violating the terms of an agreement to arbitrate, the board must find that the question raised by the dispute is one subject to arbitration under the contract.⁸⁸ Should the agreement under which the employer seeks redress contain a controlling cause in violation of the act, the board has held that, again as under subsection 111.06(1)(f), it will not enforce such a clause.⁸⁹

In general, provisions of this subsection have had little effect on labor-management relations in Wisconsin. Although the yearly average may vary, generally the board receives from five to six times as many cases brought against employers as against either employees or their bargaining representatives. During the course of the interviews both labor and management displayed little interest in discussing this subsection.

d. *Non-recognition or Non-acceptance of an Award.* The attitude of both labor and management on subsection 111.06(2)(d) (failure to recognize or accept an award), is much like their attitude on the previous section—neither has displayed any interest in it. This lack of interest is undoubtedly due in part to the fact that the board has not been called upon to make any determinations under this provision.

Those specifically questioned on the dearth of charges filed against labor under this provision indicated that "labor has displayed a greater willingness to take the gloves off after a fight" and so has tended to accept as conclusive the awards of both the board and the courts.

e. *Picketing, Boycotting or Striking in the Absence of a Strike Vote.* The provisions of subsection 111.06(2)(e), which are extremely complex, make it an unfair labor practice to:

Co-operate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike *unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.* [Emphasis added.]

(1) *Right of minority to strike.* In describing the Council's purpose in seeking passage of this provision and its relation to the right of the minority to strike, the draftsman noted:

[The] right to strike is preserved to employees, but this subsection provides that unless and until a majority of the employees

⁸⁷ Baldwin Plywood and Veneer Co., WERB Dec. No. 3161 (1952).

⁸⁸ Nekoosa-Edwards Paper Co., WERB Dec. No. 2371 (1950).

⁸⁹ Parsons Bros., WERB Dec. No. 2945 (1951).

in a collective bargaining unit have voted to strike, coercive measures against the employer, such as picketing, boycotting, etc., shall not be permissible. . . . [Reasonable] protection, not only of the employer but what is more important of the public itself, requires that the employer and the enterprise should be free from such coercive measures when there is no such majority sentiment in favor of a strike.⁹⁰

The above argument is not unusual considering that the act was passed in 1939, a year associated with the depression and concern on the part of the public over labor disputes and their effect on the depressed economy. What is surprising is the further argument that:

If [coercive] measures are permitted on the initiative of a minority of the employees in a collective bargaining unit, then they must be permitted on such initiative no matter how small that minority may be. That means that we are permitting a minority of the employees in such a unit, no matter how small it may be, to adopt measures that injure the majority of the employees. . . . This section does not prohibit a minority, no matter how small, from striking. *It only prohibits such minority from doing those further acts in connection with the strike which injure the other interests involved.*⁹¹ [Emphasis added.]

Thus it appears that the draftsman intended that the statute prohibit the minority only from engaging in, promoting or inducing picketing, boycotting or other concomitant acts; but not from striking, i.e., peaceful, concerted refusal to work. Certainly, no problem is presented when a minority undertakes to picket or boycott their employer in that these acts have been held a violation when performed by a majority of employees in the absence of a strike vote.⁹²

This view of the right of the minority to strike was initially supported by the Wisconsin Supreme Court in *Hotel & R.E.I. Alliance v. WERB*⁹³ where the court held:

Par. (e) by its terms does not apply to the individual. . . . It does not forbid an employee singly or in concert with others from bringing about a vote by a collective bargaining unit as to whether there shall be a strike. By the act strikes are divided into two classes,—authorized and unauthorized. . . . It is the act of co-operating in engaging in, promoting or inducing picketing, boycotting, or other overt acts in support of an unauthorized strike that par. (e) declares to be an unfair labor practice. . . .

We find nothing in the act which prevents a minority of a collective bargaining unit from withdrawing from employment either

⁹⁰ *Commentary*, *supra* note 10.

⁹¹ *Ibid.*

⁹² See *Appleton Chair Corp. v. United Brotherhood*, 239 Wis. 337, 1 N.W. 2d 188 (1941).

⁹³ *Hotel & R.E.I. Alliance v. WERB*, 236 Wis. 329, 294 N.W. 632 (1941), *aff'd*, 315 U.S. 437 (1942).

singly or in concert. They are not guilty of an unfair labor practice in so doing.

Without passing on the nature of the prohibited coercive acts, the court noted they will, of necessity, have to be determined in each instance by board review or recourse to either legal or equitable relief.⁹⁴

Subsequent board decisions sustained by the court have cast doubt on the right of a minority to strike, since by so doing they may be held to have performed some overt act concomitant of a strike. One of the leading cases in this area is *Briggs & Stratton Corporation*.⁹⁵ Here the court, in passing on the legality of the "quickie strikes," stated:

It is to be noted that par. (e) involves cooperation in engaging in overt acts concomitant of a strike. Walking out and refraining from work, and not appearing for work for the purpose of exerting economic pressure are plainly concomitants of a strike, and so doing is an overt act. Co-operation in so doing by plainest implication is prohibited unless the majority of the employees of the collective bargaining unit by secret ballot have voted to go on strike.

The net effect of this decision appears to be this: an individual employee may with impunity withhold his services; a group of employees not representing a majority may not, for by so doing they may be held to have performed an overt act concomitant of a strike. The board has not had occasion to pass squarely on this situation, but there is every indication that a minority under these circumstances might well be held guilty of an unfair practice.

(2) *Right of the majority to strike.* Under the provisions of subsection 111.06(2)(e) it appears amply clear that the majority of the employees in a collective bargaining unit are free to strike provided that they have expressed their wish to do so in a secret strike vote. The secret ballot referred to in the statute is not conducted under Board supervision, nor does the statute provide for the manner in which the balloting is to be conducted apart from the fact that the balloting is to be done in secret.

A further restriction on strike activities is to be found in section 111.11(2), wherein employees of an employer engaged in harvesting perishable farm commodities or dairy produce are required to give at least 10 days notice to their employer of an intention to strike.

In summary, this particular subsection has evoked considerable criticism from organized labor. Interestingly enough, however, labor itself is split as to the effect of this particular provision on labor-management relations. Spokesmen for several of the larger unions believe

⁹⁴ *Id.* at 347, 294 N.W. at 640.

⁹⁵ *International Union v. WERB*, 250 Wis. 550, 27 N.W. 2d 875 (1947), *aff'd*, 336 U.S. 245 (1947).

that this provision has been used "to further restrict labor's use of economic force both for organization activities and to enforce bargaining demands." Conversely, several union officers were of the opinion that this subsection has had little or no effect on their activities since "we always take a strike vote as a matter of course."

f. *Hindering and Preventing Work and Travel.* Subsection 111.06 (2)(f) makes it an unfair labor practice for employees individually or in association to:

hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.

Undoubtedly this particular subsection has been one of the more troublesome aspects of the act. Management has repeatedly argued that the public has a legitimate interest in free access to the public thoroughfares. Although management has not spoken to organized labor's argument concerning unrestricted access to the public way, this fact does not mean that these instrumentalities automatically become neutral in a labor dispute.

The attitude of Wisconsin agriculture in the late thirties toward conduct prohibited by this subsection is stated in the following:

This subsection is aimed at those practices which have most often led to scenes of violence in labor disputes. It is activities of this type which are referred to at the outset of this bill, when it declared that the public policy of the state is to substitute the 'processes of justice for the more primitive methods of trial by combat.' . . . The methods which it forbids are not those which labor as a whole can for a moment countenance. They are the methods of the racketeer and the thug.⁹⁶

As may be seen from the language, the prohibited conduct applies to not only the employees of the struck employer but also to the employees of other employers. Thus, when charges are filed with the board indicating a violation of the act, the board has jurisdiction over all who participate in the prohibited conduct.

Although board decisions in this area may be categorized by the facts which gave rise to the dispute in question, e.g., hindering or preventing work, obstructing entrance to or egress from place of work and obstructing roads, a somewhat different treatment may afford greater insight into the problems presented by this subsection. Both the applicable decisions and comments recorded fall roughly into three categories:

⁹⁶ *Commentary, supra* note 10.

problems presented by (1) prohibited mass picketing, (2) permissible mass picketing and (3) "non-mass" picketing.

(1) *Prohibited mass picketing.* Prohibited mass picketing is that type of picketing which has as its purpose the prevention of a lawful pursuit through intimidation, force or coercion. Thus, an excessively large number of pickets concentrated in a given area, regardless of their conduct, may support a finding that their presence itself constitutes some measure of intimidation or coercion. Where this type of activity is carried on for the purpose of hindering or preventing work or employment, a party bringing charges must show some causal connection between the mass picketing and the inability of employees to perform their duties. On the other hand, where charges are brought against activities designed to obstruct travel, the fact that the activities are so designed is enough to support the board's finding that the act has been violated.

The majority of the employers polled indicated that they felt mass picketing *per se* should constitute a violation of the act regardless of the purpose for which it was being conducted. Labor on the other hand indicated universally that it felt that the prohibitions on mass picketing were unnecessarily strict and "far from realistic." In amplification, several union officers stated that if management is to have the free use of the highways to break a strike, labor should have a similar privilege to utilize the highways for effecting their objective. The intensity with which a given union officer argued his position was dependent in part on the trade with which he was associated. Thus a teamster indicated that, in his opinion, the state's highway system was the situs of the dispute involving the cartage industry.

(2) *Permissible mass picketing.* Permissible mass picketing is that type of mass picketing which has as its objective a lawful purpose, not inconsistent with the over-all direction of the statute. An example of such activity is to be found in *Western Leather*⁹⁷ wherein it was held that the mass picketing of all the plant gates by the union was for the purpose of demonstrating union solidarity and improving the "employees' working condition" and, therefore, not in violation of subsection 111.06(2)(f). It is to be noted that in this instance the Board specifically found that "such picketing did not obstruct or interfere with entrance or egress to the plant."

(3) *Non-mass picketing.* "Non-mass" picketing is that picketing, whether permissible or not, which can be conducted by more than one individual, but which does not partake of group activity. While sheer numbers may contribute to its function or success, numerical superiority is not the controlling factor. Some insight into the nature of permissible

⁹⁷ *Western Leather Co.*, WERB Dec. No. 287 (1941).

"non-mass" picketing may be found in examining the board's decision in *Edward Konop*,⁹⁸ a matter involving the union's picketing of a small barber shop. Here the board found that the union's picketing of the employer's place of business after it had removed the union shop card was permissible. This action was considered valid because the union had made no attempt to coerce or intimidate the employer, his employees, or his prospective customers. In support of its conclusion, the board noted that the picketing under review was for the purpose of advising the public that the employer's shop was no longer operated as a union establishment. Similarly, in a case concerning "height of postwar labor unrest," the board held that certain acts did not constitute an unfair labor practice in the absence of threats or the use of force. The acts in question were the flagging down of cars and trucks containing both prospective employees and those engaged in delivering materials to the plant. These practice was done for the purpose of advising them that a strike was in progress.⁹⁹

Management on the whole has been rather critical of this section. At least one corporate officer has stated that he fails to see how the board can pass judgment on the effect which picketing may have on customers, i.e., whether or not the mere presence of pickets is coercive in the absence of threats or violence. Labor spokesmen on the other hand have shown broad appreciation for the distinction between permissible and non-permissible activities in this area.

Summary. Once rapport has been established between the interviewer and a local union official, one has the feeling that the provisions of subsection 111.06(2)(f) have not been as damaging to labor activities as many spokesmen for organized labor would have the public believe. One union officer indicated in confidence that "these provisions [subsections 111.06(2)(e) and (f)] allow us to keep a firm hand on our people with the result that violence has been kept down." Still another union officer volunteered that "we do not know too much about the board decisions [in this area]; however, under the act we think that we pretty well know how far we can go and what to tell our people." Both these individuals indicated that a "strike situation is difficult" in that the "membership" of the union cannot always be counted upon to refrain from all acts prohibited by statute.

Management, asked to comment specifically on the effect of subsection 111.06(2)(f) on labor-management relations, indicated a feeling that the act has had "qualified success in this area." Many expressed the belief that "prompter action is needed in boycott cases" and that "no degree of violence should be permitted."

⁹⁸ *Edward Konop*, WERB Dec. No. 1505 (1948).

⁹⁹ *Foster-Lethman Mills*, WERB Dec. No. 1343 (1947).

g. *Engaging in a Secondary Boycott, and Hindering or Preventing the Obtaining, Using or Disposing of Materials, Equipment or Services.* Incorporated into the act is a sweeping restriction on the use of the secondary boycott; under subsection 111.06(2)(g) it is an unfair practice for employees as individuals or in concert with others to:

engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services. . . .

Section 111.02(12) defines a secondary boycott to include:

combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists . . . in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

The records of the Agricultural Council indicate that the primary purpose for which this subsection was drafted was to afford protection to the small retailer with no direct interest in the outcome of a given labor dispute. In view of the fact that secondary boycotts against smaller retailers were particularly effective in the late thirties, it is not surprising that the act should contain such a provision. Farm groups were well aware that many small retailers, rather than risk the loss of business resulting from a secondary boycott, would refuse to handle farm produce processed by non-union labor. Several spokesmen for the co-operative movement in Wisconsin indicated in interviews that this fear was "heightened by the knowledge that the average retailer is by no means dependent on a given supplier and that in many instances he can operate just as competitively in merchandising items produced by union labor."

In order to understand the restrictions imposed by this section, the definition of a labor dispute set forth in subsection 111.02(8) is also important:

The term 'labor dispute' means any controversy between an employer and the majority of his employees in a collective bargaining unit concerning the right or process of details of collective bargaining or the designation of representatives. . . .

Since a labor dispute is thus limited to a majority of the employees and their employer, a dispute between a minority of the employees and their employer or the majority group may well come under the prohibition of 111.06(2)(g).

In turning to what constitutes a secondary boycott within the prohibitions of this section, picketing the place of business of a customer of an employer, although ostensibly directed against the employer's

delivery trucks, would appear to fall within the prohibition.¹⁰⁰ In *A. L. Weiss*¹⁰¹ the union was found guilty of an unfair labor practice under section 111.06(2)(g) in engaging in a secondary boycott of an apartment building. However, in a decision involving almost identical facts¹⁰² the board held that the union clearly did not commit an unfair labor practice in picketing a building, *per se*, with incidental inconvenience to the tenants.

The board's decisions interpreting acts designed to hinder or prevent the obtaining, using or disposing of materials, equipment and services are less easily comprehended. For example, in *Lester L. Leistiko*,¹⁰³ a union representative, in requesting an employer dealing with a non-union trucker to cease doing business with the trucker, was not held to have violated this subsection. The court pointed out that there was no evidence that the employer was in fact prevented from doing business with the trucker by reason of threat, intimidation, or force. However, less subtle union pressure¹⁰⁴ upon an employee to discontinue patronizing a non-union employer under threat of loss of employment was held to violate this provision. Actual physical restraint of employees or goods also have been held clearly in violation of the act.

Before turning to the comments recorded during the course of field interviews, it should be noted that this subsection does provide "that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft." This proviso has not received extensive interpretation by either the Board or the courts, and its over-all impact is not clear. Presumably, it was included to permit members of the AFL engaged in a similar trade to support their fellow workers through concerted activities. In practice, however, it appears to have had little, if any, effect. The majority of the parties interviewed chose not to comment on this particular aspect of 111.06(2)(g).

Perhaps no other area of the act is as inaccurately portrayed by a review of board decisions as is subsection 111.06(2)(g). First, in many instances the secondary boycott is an institution born of necessity and, therefore, not easily regulated. Its continued presence on both the national and state scenes needs no comment. Second, it is worth noting that "only the crudest attempts to enforce a secondary boycott are brought to the board's attention."

The history of the secondary boycott in its most obvious forms is well known. In commenting on the act's inability to cope with the various forms which a secondary boycott may take, an individual recently

¹⁰⁰ *Accord*, *WERB v. Milk Union*, 238 Wis. 379, 299 N.W. 31 (1941).

¹⁰¹ *A. L. Weiss*, *WERB Dec. No. 1368* (1947).

¹⁰² *Lauson Investment Co.*, *WERB Dec. No. 2363* (1940).

¹⁰³ *Lester L. Leistiko*, *WERB Dec. No. 146* (1941).

¹⁰⁴ *Milwaukee Novelty Dye Works*, *WERB Dec. No. 127* (1940).

stated that only rarely does a business agent attempt to call union employees off a job on which non-union labor is being used.

The majority of those interviewed felt that the act had been relatively ineffective in limiting the use of the secondary boycott. Both labor and management indicated that they felt that any attempt by either federal or state legislation to regulate its use is destined to fail. Both labor and management called attention to the experience of the NLRB in its attempts to regulate this type of conduct. In general it appears that subsection 111.06(2)(g) is regarded as one of the least successful provisions of the act by both labor and management.

h. Unauthorized Possession of Property and Interference with Production. Subsection 111.06(2)(h) of the act forbids labor:

To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

(1) *Unauthorized possession of property.* At the time of the enactment of the Peace Act, the so-called "sit-down" strikes of the mid-thirties had largely run their course in Wisconsin. Therefore, these provisions have not been construed by the board in passing on charges arising out of such a strike. There is, however, little doubt as to the draftsman's intention when he included in the act the language, except by leaving the premises in an orderly manner for the purpose of going on strike." It is noteworthy that the two board decisions in the area of unlawful acts of possession occurred shortly after the act was passed. In *Creamery Package Company*¹⁰⁵ the board found the union guilty of an unfair practice in picketing the plant and in refusing to allow the employer's representatives entrance except on three occasions during a five-week period. In a matter decided a month later¹⁰⁶ the board held that the picketing employees had in effect taken unauthorized possession of the plant by refusing to company officers and non-strikers access to the plant in question.

The absence of litigation in this area was explained by one labor attorney as resulting from (a) the attractiveness of other means of enforcing labor's demands, and (b) a greater responsiveness on the part of labor to public opinion.

(2) *Interference with production.* Although the act prohibits certain conduct amounting to sabotage or damage to the employer's physical plant during the course of a labor dispute, there are no reported board decisions covering such occurrences. The forces which prompted enactment of the legislation were discussed with several of its sponsors.

¹⁰⁵ *Creamery Package Co.*, WERB Dec. No. 117 (1940).

¹⁰⁶ *Spring City Foundry Co.*, WERB Dec. No. 126 (1940), *aff'd*, *Waukesha Co. Cir. Ct.* (1941).

Invariably, damage to the employer's property during the course of a strike was listed as one of the factors which "focused attention on the need for curative legislation." When questioned as to how frequently the Board is confronted with charges of willful damage to an employer's property, a representative of the Board indicated that such charges are few and far between. In the most recent example of such alleged damages, involving an upstate creamery co-operative in the fall of 1957, charges were not filed, yet, this incident did strain relations between the employer and the union.

As for charges filed under this subsection against conduct designed to impede production, it has been held unlawful for a union to adopt by-laws setting forth predetermined standards of production.¹⁰⁷ In another case a less subtle approach was held in violation of the act when the Board found that the union had directed a "slow-down" for the purpose of reducing the plant's output.¹⁰⁸

Summary of Subsections 111.06(2)(f), (g) and (h). It should be noted that these subsections are of particular importance to organized labor, not only historically but currently. The failure or success of many strikes hinges on the ability of labor to close the plant down physically, to impose an effective secondary boycott on the products of the employer and to, in effect, control the plant. During the course of field interviews, attorneys for both labor and management indicated that control of the plant gates is crucial. There is ample evidence available from a study of Wisconsin labor disputes in the past two decades to substantiate this position.¹⁰⁹

Control of the plant is more than just economic strangulation of the employer; it is an awesome showing of union solidarity and authority. It commands both the respect and obedience of the uncommitted worker who is torn between catracism and the "weekly pay check." It is perhaps for this reason that attorneys for both sides, as distinguished from labor and management spokesmen, displayed considerable willingness to discuss plant gate "strategy."

Apart from the specific impact which these three subsections have had on labor-management relations, there is proof that in the over-all picture, these restrictions have severely curtailed organized labor's ability to strike on its own terms once a given plant has been organized.

A secondary effect of these limitations has been to make strike violence more abhorrent in the eyes of management. Frequently, in discussing these three subsections, management stated that a particular type of conduct was wrong because "the act states that it is wrong." This is one of the not too rare examples of management's adoption of

¹⁰⁷ American Dry Cleaners et al, WERB Dec. No. 2723, 2724, 2732, 2734 (1951).

¹⁰⁸ Stolper Steel Products Corp., WERB Dec. No. 2109 (1949), *aff'd*, International Union v. WERB, 258 Wis. 481, 46 N.W. 2d 185 (1950).

¹⁰⁹ Kohler Co., WERB Dec. No. 3740 (1954).

legislative standards of conduct as standards of conduct applicable to industry. Organized labor has been quick to sense this and is often heard to complain that, "under the act the standards of conduct are those of a group of farmers and not of the industrial area."

On the whole it appears that these three subsections have caused organized labor particular concern and often form the basis for labor's criticism of the "one-sidedness" of the act.

i. *Failure to Give Notice of Intention to Strike.* The Peace Act under subsection 111.06(2)(i) makes it an unfair practice "to fail to give notice of intention to strike provided in section 111.11." In practice, unions tend to file their notice of an intention to strike at the beginning of negotiations with the covered industries and thereby negate the protection afforded by this subsection.

j. *Commission of Crimes or Misdemeanors in Connection with Disputes Arising Out of the Employment Relationship.* Section 111.06(2)(j) makes it an unfair labor practice for employees collectively or singly to "commit any crime or misdemeanor in connection with any controversy as to employment relations." This subsection has its counterpart in subsection 111.06(1)(1), prohibiting similar conduct on the part of employers. Such acts as physically blocking the entrance to an employer's premises, and in so doing committing a misdemeanor, constitute a violation of this subsection.¹¹⁰ Likewise, physical assault to either the employer, his employees or local law enforcement officers would be held to be conduct of a prohibited nature.¹¹¹

Management, on the other hand, has been extremely complimentary in appraisal of this particular provision. Only one attorney for management indicated he felt that this provision could profitably be repealed. Spokesmen for management itself indicated that the processes of criminal law were far too slow, and that in given instances enforcement agencies and local courts are reluctant to act. When confronted with these arguments, labor hastily countered with the suggestion that the answer lies in correcting the deficiencies in both law enforcement agencies and courts, rather than adding to the duties of the board.

1. *Engaging in Jurisdictional Strikes.*¹¹² Subsection 111.06(2)(1) makes it an unfair labor practice for employees individually or in concert with others "to engage in, promote or induce a jurisdictional strike." This provision has been of little importance and as of the completion of this study the board has not been called upon to render a decision under it.

3. *Acts Done in the Interest of Another.* Section 111.06(3) makes it an unfair labor practice for any person to do anything on behalf of

¹¹⁰ *Accord*, Creamery Package Co., WERB Dec. No. 117 (1940).

¹¹¹ See: *Marathon Electric Mfg. Corp.*, WERB Dec. No. 3141 (1952); *Milwaukee Nash*, WERB Dec. No. 3275 (1952).

¹¹² The statutes contain no §111.06(2)(k).

either labor or management which is prohibited by the act. This subsection is seldom invoked.

CONCLUSION

Considerable difficulty is experienced in passing judgment on what effect the unfair labor practice provisions of the Act have had on labor management relation. Taken alone any given prohibition on the conduct on the part of either labor or management may seem unrealistic and excessive. Considered as a whole the legislative directives of section 111.06 assume quite a different posture. A mere meaningful test might be to ask whether Wisconsin has enjoyed greater or lesser industrial peace than adjacent states. However, such a determination must await further study.

Perhaps it should be noted in conclusion that Wisconsin has no right-to-work law nor has there been any real demand for one. What the future holds for the W.E.P.A. must of necessity remain a matter of conjecture. However, high on the list of questions which remain unanswered is whether the multitudinous restrictions of the Act afford the board sufficient leeway in interpreting the Act in the light of current problems.

In sum it would appear that the Act, and the unfair labor practice provisions in particular, have contributed to the day-to-day adjustment inherent in industrial relation. Thus, the Act as a whole has tended to implement the state's policy to encourage collective bargaining in its broadest sense. Certainly, in many respects it has been a remarkable piece of legislation and has displayed considerable tenacity in remaining on the statute books. (To be concluded in Volume 45, Number 3, of the *Marquette Law Review*.)